

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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DEBORAH FEINGOLD D/B/A
DEBORAH FEINGOLD PHOTOGRAPHY,

Plaintiff,

No. 18-cv-2055

-against-

ANSWER

RAGEON, INC., JOHN DOES 1-4.,

Defendants.

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Defendant RageOn, Inc. (“RageOn” or “Defendant”), by its undersigned counsel, submits the following Answer to the Amended Complaint of Deborah Feingold d/b/a Deborah Feingold Photography (“Plaintiff”). Except as hereinafter expressly admitted, qualified, or otherwise answered, Defendant denies each and every allegation and assertion made in the Complaint. The paragraphs that follow align with the numbered paragraphs of the Complaint:

1. Defendant admits that the claims are as described.
2. Defendant denies the allegations contained in Paragraph 2 of the Complaint.
3. Defendant denies the allegations contained in Paragraph 3 of the Complaint.
4. Defendant denies the allegations contained in Paragraph 4 of the Complaint.
5. Defendant denies the allegations contained in Paragraph 5 of the Complaint.
6. Defendant denies the allegations contained in Paragraph 6 of the Complaint.

PARTIES

7. In response to Paragraph 7 of the Complaint, Defendant is without knowledge or information sufficient to form a belief as to the truth of these allegations and therefore denies them.

8. In response to Paragraph 8 of the Complaint, Defendant is without knowledge or

information sufficient to form a belief as to the truth of these allegations and therefore denies them.

9. In response to Paragraph 9 of the Complaint, Defendant is without knowledge or information sufficient to form a belief as to the truth of these allegations and therefore denies them.

10. In response to Paragraph 10 of the Complaint, Defendant is without knowledge or information sufficient to form a belief as to the truth of these allegations and therefore denies them.

11. Defendant admits the allegations contained in Paragraph 11 of the Complaint.

12. Defendant admits the allegations contained in Paragraph 12 of the Complaint.

13. In response to Paragraph 13 of the Complaint, Defendant is without knowledge or information sufficient to form a belief as to the truth of these allegations relating to what Plaintiff knows and therefore denies them.

14. In response to Paragraph 14 of the Complaint, Defendant is without knowledge or information sufficient to form a belief as to the truth of these allegations and therefore denies them.

15. In response to Paragraph 15 of the Complaint, Defendant is without knowledge or information sufficient to form a belief as to the truth of these allegations and therefore denies them.

16. In response to Paragraph 16 of the Complaint, Defendant is without knowledge or information sufficient to form a belief as to the truth of these allegations and therefore denies them.

17. In response to Paragraph 17 of the Complaint, Defendant is without knowledge or information sufficient to form a belief as to the truth of these allegations and therefore denies them.

JURISDICTION

18. In response to Paragraph 18 of the Complaint, Defendant admits that this Court has subject matter jurisdiction over this action, but otherwise denies these allegations.

19. In response to Paragraph 19 of the Complaint, Defendant admits that this Court has subject matter jurisdiction over this action, but otherwise denies these allegations.

20. In response to Paragraph 20 of the Complaint, Defendant admits that it periodically ships goods unrelated to this Action to consumers in New York State.

21. In response to Paragraph 21 of the Complaint, Defendant denies that any allegedly infringing items were sold.

22. In response to Paragraph 22 of the Complaint, Defendant admits that this Court has personal jurisdiction over this action, but otherwise denies these allegations.

VENUE

23. In response to Paragraph 4 of the Complaint, Defendant denies that any events or omissions relating to this Action occurred in this District.

FACTS

24. In response to Paragraph 24 of the Complaint, Defendant is without knowledge or information sufficient to form a belief as to the truth of these allegations and therefore denies them.

25. In response to Paragraph 25 of the Complaint, Defendant is without knowledge or information sufficient to form a belief as to the truth of these allegations and therefore denies them.

26. In response to Paragraph 26 of the Complaint, Defendant is without knowledge or information sufficient to form a belief as to the truth of these allegations and therefore denies them.

27. In response to Paragraph 27 of the Complaint, Defendant is without knowledge or information sufficient to form a belief as to the truth of these allegations and therefore denies them.

28. In response to Paragraph 28 of the Complaint, Defendant is without knowledge or information sufficient to form a belief as to the truth of these allegations and therefore denies them.

29. Defendant admits that it is an online custom marketplace but otherwise denies the allegations contained in Paragraph 29 of the Complaint.

30. In response to Paragraph 30 of the Complaint, Defendant admits that has described

itself as “the first user generated custom marketplace that is the #1 Safe Harbor for intellectual property,” but otherwise denies these allegations.

31. Defendant denies the allegations contained in Paragraph 31 of the Complaint.

32. In response to Paragraph 32 of the Complaint, Defendant is without knowledge or information sufficient to form a belief as to the truth of these allegations and therefore denies them.

33. In response to Paragraph 33 of the Complaint, Defendant is without knowledge or information sufficient to form a belief as to the truth of these allegations and therefore denies them.

34. Defendant denies the allegations contained in Paragraph 34 of the Complaint.

35. Defendant denies the allegations contained in Paragraph 35 of the Complaint.

36. Defendant denies the allegations contained in Paragraph 36 of the Complaint.

37. Defendant denies the allegations contained in Paragraph 37 of the Complaint.

38. Defendant denies the allegations contained in Paragraph 38 of the Complaint.

39. Defendant denies the allegations contained in Paragraph 39 of the Complaint.

40. Defendant denies the allegations contained in Paragraph 40 of the Complaint.

41. Defendant denies the allegations contained in Paragraph 41 of the Complaint.

42. Defendant admits that Plaintiff sent certain letters to Defendant but otherwise denies the allegations contained in Paragraph 42 of the Complaint as those allegations reference images not at issue in this Action.

43. Defendant admits that it sent certain emails to Plaintiff but otherwise denies the allegations contained in Paragraph 43 of the Complaint as those allegations reference images not at issue in this Action.

44. Defendant denies the allegations contained in Paragraph 44 of the Complaint.

45. Defendant denies the allegations contained in Paragraph 45 of the Complaint.

46. Defendant denies the allegations contained in Paragraph 46 of the Complaint.

47. Defendant denies the allegations contained in Paragraph 47 of the Complaint.

48. Defendant denies the allegations contained in Paragraph 48 of the Complaint.

49. Defendant admits that Plaintiff sent the cease and desist letter noted in Paragraph 49 of the Complaint.

50. Defendant denies the allegations contained in Paragraph 50 of the Complaint.

51. Defendant admits that it sent the email noted in Paragraph 51 of the Complaint.

52. Defendant denies the allegations contained in Paragraph 52 of the Complaint.

53. Defendant denies the allegations contained in Paragraph 53 of the Complaint.

54. Defendant admits the allegations contained in Paragraph 54 of the Complaint.

55. Defendant denies the allegations contained in Paragraph 55 of the Complaint.

56. Defendant denies the allegations contained in Paragraph 56 of the Complaint.

57. Defendant denies the allegations contained in Paragraph 57 of the Complaint.

58. Defendant denies the allegations contained in Paragraph 58 of the Complaint.

59. Defendant denies the allegations contained in Paragraph 59 of the Complaint.

60. Defendant denies the allegations contained in Paragraph 60 of the Complaint.

61. Defendant denies the allegations contained in Paragraph 61 of the Complaint.

62. In response to Paragraph 62 of the Complaint, Defendant is without knowledge or information sufficient to form a belief as to the truth of these allegations and therefore denies them.

FIRST CLAIM FOR RELIEF

63. Defendant incorporates by reference its responses to Paragraphs 1 through 62 above.

64. Defendant denies the allegations contained in Paragraph 64 of the Complaint.

65. Defendant denies the allegations contained in Paragraph 65 of the Complaint.

66. Defendant denies the allegations contained in Paragraph 66 of the Complaint.

67. Defendant denies the allegations contained in Paragraph 67 of the Complaint.

68. In response to Paragraph 68 of the Complaint, Defendant is without knowledge or information sufficient to form a belief as to the truth of these allegations and therefore denies them.

69. In response to Paragraph 69 of the Complaint, Defendant is without knowledge or information sufficient to form a belief as to the truth of these allegations and therefore denies them.

70. In response to Paragraph 70 of the Complaint, Defendant is without knowledge or information sufficient to form a belief as to the truth of these allegations and therefore denies them.

71. In response to Paragraph 71 of the Complaint, Defendant is without knowledge or information sufficient to form a belief as to the truth of these allegations and therefore denies them.

72. Defendant denies the allegations contained in Paragraph 72 of the Complaint.

73. Defendant denies the allegations contained in Paragraph 73 of the Complaint.

74. Defendant denies the allegations contained in Paragraph 74 of the Complaint.

75. Defendant denies the allegations contained in Paragraph 75 of the Complaint.

76. Defendant denies the allegations contained in Paragraph 76 of the Complaint.

SECOND CLAIM FOR RELIEF

77. Defendant incorporates by reference its responses to Paragraphs 1 through 76 above.

78. Defendant denies the allegations contained in Paragraph 78 of the Complaint, as clarified by stipulation.

79. Defendant denies the allegations contained in Paragraph 79 of the Complaint.

80. Defendant denies the allegations contained in Paragraph 80 of the Complaint.

81. Defendant denies the allegations contained in Paragraph 81 of the Complaint.

82. Defendant denies the allegations contained in Paragraph 82 of the Complaint, as clarified by stipulation.

THIRD CLAIM FOR RELIEF

83. Defendant incorporates by reference its responses to Paragraphs 1 through 84 above.

84. Defendant denies the allegations contained in Paragraph 84 of the Complaint.

85. Defendant denies the allegations contained in Paragraph 85 of the Complaint.

86. Defendant denies the allegations contained in Paragraph 86 of the Complaint.

87. Defendant denies the allegations contained in Paragraph 87 of the Complaint.

PRAYER FOR RELIEF

Wherefore, having answered each and every allegation contained in Plaintiff's Complaint, Defendant respectfully requests the following relief:

1. That all of Plaintiff's claims be dismissed in their entirety with prejudice;
2. That the costs of this action, including but not limited to attorneys' fees, be taxed against Plaintiff; and
3. That the Court grant such other relief as the Court may deem just and proper.

AFFIRMATIVE DEFENSES

1. The Complaint fails to state a claim upon which relief may be granted.
2. Plaintiff is barred from seeking the relief sought as to those photographs that were not registered when the Complaint was filed.
3. Plaintiff's claims are barred by the doctrine of fair use.

4. Plaintiff's claims are barred under the Digital Millennium Copyright Act, 17 U.S.C. § 512.

5. Plaintiff is barred from relief by the doctrines of waiver, estoppel, and/or release, due to Plaintiff's own acts and/or omissions with reference to the subject matter of the Complaint.

6. Plaintiff's claims are barred by the doctrine of misuse of copyright.

7. Plaintiff's claims are barred because Defendant's conduct was in good faith and with non-willful intent.

8. Plaintiff's claims are barred because of lack of volitional conduct by Defendant.

9. Plaintiff's claims are barred because Defendant lacked the right or ability to supervise or control the infringing activity of the other defendants.

Respectfully submitted,

Dated: September 6, 2018

By:



Andrew Gerber (AG 0779)
Ilya Kushnirsky (IK 3899)

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